

## ADVISORY COMMITTEE MINUTES

November 14, 2006

### **Members Present:**

Bob Shosted  
Dave Gribskov  
Linda Sams  
Max Sheils  
Dave Whaley  
Senator Andreason

Glenna Christensen  
Steve Haase  
James Arnold  
Rian Van Leuven  
John Greenfield

### **Members Absent:**

Representative Garrett  
Steve Millard  
Rod Fuger  
Kriste Crane

Chairman Rian Van Leuven asked for introductions of the members and public attendees.

### **Minutes:**

Upon motion by Dave Whaley, seconded by Max Sheils, the Minutes of August 29, 2006, were approved as written.

### **Subcommittee Reports:**

Uninsured Employers Fund – (*Chair John Greenfield, Dave Whaley, Ex-Officios: Jack Barrett, Jon Bauman, Lynn Luker, and Alan Gardner*) John Greenfield reported that he has received an extensive amount of information from Keith Messmer with the Montana Labor Relations Division regarding the establishment of Montana's uninsured employers' fund. Mr. Greenfield plans to distribute the information to the subcommittee members for analysis before a telephone conference is scheduled with Mr. Messmer. Mr. Greenfield will schedule a meeting of the subcommittee before the next Advisory Committee meeting.

#### Public Input

In response to a question regarding proposed rule or statute changes, Jack Barrett stated that the uninsured employers' fund subcommittee would not be submitting any proposed changes this legislative session.

Nominations Subcommittee– Change of Charter – (*Chair Max Sheils, Dave Whaley, Glenna Christensen, Rian Van Leuven, and Linda Sams*) Max Sheils reported that he will schedule a meeting with the subcommittee to discuss the following:

- 1) Term limits of members
- 2) How to generate more interest in membership
- 3) Adding another Advisory Committee member to represent the interest of physicians

- 4) Election of members or appointment by the Commission from a pool

Chairman Van Leuven delegated his position as a member of the subcommittee to Rod Fuger.

Proposed Legislation, Idaho Code §72-713 – (*Chair, Max Sheils, Dave Whaley, Glenna Christensen, Ex-Officio Alan Conilogue, Linda Sams, David Gribskov, and James Arnold*). Subcommittee Chair Max Sheils reported that this subcommittee was formed to determine the feasibility of allowing the Commission to send hearing notices via first class mail in addition to mailing notices by certified mail. Mr. Sheils stated that the Industrial Commission in virtually every case holds a telephonic conference with the Referee and the parties prior to a hearing so that all parties are aware of the impending hearing. Mr. Sheils found that the adjudication staff contacts pro se claimants prior to a hearing to ensure proper notification. Once the subcommittee agreed to change the rule, Legislative Services was contacted and the proposed changes were drafted to §72-713. Mr. Sheils reported that the proposed change would reduce mailing costs for the Industrial Commission from approximately \$2,000 per year to approximately \$300 per year. He also noted that the Supreme Court as well as the District Courts all send notices by first class mail. The subcommittee recommends the Advisory Committee approve the amendments to §72-713. After discussion and consideration, it was the Advisory Committee's consensus that the subcommittee's recommendations be adopted and the Industrial Commission proceed with the amendments of Idaho Code §72-713, allowing notices to be sent by first class mail. Senator John Andreason agreed to sponsor the bill since the deadline for submitting legislative changes by the Commission has passed. The Commission agreed to support the changes.

Dave Whaley suggested that this issue might need revisiting if the U.S. Postal service becomes privatized. Mr. Whaley's understanding is that mail delivery could be delayed as much as two to four days if offices are consolidated under a privatized system.

### **Consideration of Issues:**

Follow-up – Education Presentation to Legislators – Commissioner Limbaugh reported that once membership of the legislative committees is established, the Commission would coordinate with the Chairmen of the House and Senate Commerce and Human Resources Committees to schedule a presentation for their members on the role of the Industrial Commission. Senator Andreason suggested that January would be the best time for the presentation and he would be willing to have the Senate Commerce and Human Resource Committee come to the Commission. Mr. Van Leuven asked that the members of the Advisory Committee be notified when the presentation is scheduled so they may attend as well.

Proposed Rules – Employers' Reports 17.02.06 – Kim Takagi, Benefits Administration Consultant, explained the changes proposed to IDAPA 17.02.06.021.02 The current rule requires sureties to submit Summaries of Payments (SOP) within 60 days of termination

of disability. In many cases medical bills may be outstanding or PPI ratings may still be pending within this timeline. The result is sureties must either submit an SOP that will require a subsequent amendment, or risk a possible non-compliance on an audit if they don't file timely. The proposed change extends the filing date from 60 days to 120 days. Mr. Gribskov stated that this is an excellent change for the insurance companies, and will help in reducing paperwork. Chairman Van Leuven requested consensus on approval of the proposed change. Consensus was reached.

Ms. Takagi reported that the second change to this rule would add permanent total disability claims to the annual filing of summaries of payments. The interim summaries of payments on permanent total disability claims would allow the Commission to verify that payments are being paid correctly on an annual basis rather than trying to audit a claim that could be more than 40 years old. It would also help to alleviate over and underpayments on an ongoing basis. Glenna Christensen stated that she supports this change since it is quite a burdensome process to try and audit payments that have been ongoing for many years. Mr. Haase and Mr. Gribskov also stated they support this change as well. Chairman Van Leuven requested consensus on approval of the proposed change and consensus was reached.

Rule Change for 17.02.06.021.04 – Ms. Takagi explained that the Commission is proposing to change the second time period for notifying the Commission of the inability to respond to its request for information from ten (10) days to fifteen (15) days to correspond with the first sentence regarding response submission timelines. The Commission hopes to reduce the uncertainty of the time periods with this change. After discussion, Chairman Van Leuven asked for a consensus for approval of the proposed change to this rule. Consensus was reached.

Proposed Rules – Medical Fees 17.02.08 – Former Adjudication Manager Alan Conilogue gave a power point presentation on the proposed changes to IDAPA 17.02.08 which includes the medical fee schedule. Mr. Conilogue reported that as a result of the public hearings, several changes have been made to the proposed rule. Some of the changes include new proposed conversion factors, Ambulatory Surgery Center reimbursements, clarification that the fee schedule does not pertain to hospitals, the number of beds distinguishing large and small hospitals with a distinction in rates, and durable goods reimbursement. Steve Haase questioned the 30% assessed to payors in regard to medical fee disputes when it involves hospital charges, as it is often difficult to determine what the appropriate charge should be. Discussion was held and Mr. Conilogue stated that the Commission would take a look at possibly exempting hospital reimbursement disputes in the language pertaining to the 30% assessment.

Dave Whaley voiced his concern regarding the injured workers' ability to access quality health care if reimbursements to physicians are too low. Steve Haase stated that his understanding of medical fee schedules is that it is an ongoing process for many years. Director Mindy Montgomery stated that Idaho has had the best return to work program in the nation and is concerned that we should proceed slowly with this process. Further discussion was held. The Commission will be submitting the medical fee schedule as a

pending rule tomorrow. Senator Andreason stated that the legislature would review all the rules the first two weeks of the session and both the House and Senate have many new members and the Chairmen of the Committees don't know yet who will be on their committees. Mr. Greenfield expressed his hopes that this medical fee schedule will not cause too many doctors to leave the system, which would further limit access to physicians for injured workers. No consensus was reached on the pending rule. Individual members want the ability to testify on behalf of their constituents in regards to this rule.

Commissioner Limbaugh stated that the Commission would be submitting a Request for Proposal (RFP) soon for a Medical Fee Consultant to review the current medical fee schedule rule and to submit recommendations for hospital, pharmaceutical, durable goods, and ambulatory surgery center reimbursements. The Chairman asked the members of the Advisory Committee to give their thoughts and opinions on the pending rule.

### Public Input

Woody Richards stated that it is important for the Industrial Commission to stay proactive on this subject. Mr. Richards has informed legislators and the Commission that the insurance companies and self insurers that he represents would support additional funding for additional staff and research so the Commission won't be short of expertise in regards to medical fee rules. Mr. Richard's observations are that the Commission should not compare Idaho to those states who have made irrational actions regarding medical fees. He stated that procedurally the Commission could submit a portion of the rule for approval now and submit the rest of the rule as a temporary rule later. Mr. Richards said the companies he represents support the need for additional schools for doctor and nursing programs in Idaho. Mr. Richards would also like to have the pending medical fee schedule numbers analyzed by NCCI for its opinion on the schedule's affect on rates. He also recommended that everyone read the Workers' Compensation Research Institute's report that was sent to the members.

### Other Issues:

A concern regarding a claimant that recently visited the Commission with a desire to change the workers' compensation statutes or rules to prevent attorney fees from being included as part of disability income when applying for aid was discussed. Attorneys James Arnold, Max Sheils and John Greenfield volunteered their assistance, and the claimant will be contacted and directed to call one of them for assistance in resolving this problem. The members determined that there was a solution without statute or rule changes.

Industrial Commission Report – Director Mindy Montgomery reported that the Request for Proposal (RFP) to relocate the Boise office has closed and the Commission should know by the next Advisory Committee meeting where the Commission may be

moving. The Boise Rehabilitation Department is moving to Emerald close to Morris Hill. Rehab hopes to be moved by February.

The Director reported that she is still tweaking the RFP for a Medical Contractor. She has been looking at some of Montana's requirements to assist in preparing the RFP. Also, the Commission will be announcing an opening to fill Alan Conilogue's position, which has been changed. The new position will deal strictly with medical fees and disputes. Alan Taylor has been named as Chief Referee to oversee the Adjudication Department.

### **Preparation for Future Meetings:**

Topics: Uninsured Employers' Fund - John Greenfield  
Nominations Subcommittee Report – Max Sheils  
Update on Rules and Legislation - Various  
Educational Presentation – after legislative committee makeup –  
Notification of Advisory Committee Members

The Commission will draft a letter to thank Representative Garrett for her efforts and participation on the Commission's Advisory Committee with the signatures of the Advisory Committee Chairman Rian Van Leuven and Commission Chairman Tom Limbaugh on behalf of the Advisory Committee members and Commission.

Mr. Van Leuven wanted to note in the minutes that the members of the Advisory Committee thank both Representative Kathie Garrett and Senator John Andreason for their participation and gratefully respect the time and effort they both spend with the Committee since without their help the Committee would struggle with some of its issues.

The Committee thanked Bob Shosted for his leadership as Chairman of the Advisory Committee during the last year.

Max Sheils reported that the Idaho State Bar's annual seminar will be held in March and Mr. Sheils will be speaking on the role of the Advisory Committee. He asked the members to let him know if there was any specific information they would like him to cover.

The next meeting was scheduled for February 7, 2007 at 9:30 a.m.

There being no further business, the meeting adjourned.